

FINAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

General Licensing Requirements, Title 22, Division 6, Chapter 1 (The General Licensing Requirements apply to adult residential facilities, adult day programs, social rehabilitation facilities, small family homes, and group homes.)

Section 80044 Title and Section 80044(a)

Specific Purpose:

The specific purpose of these amendments is to repeal the term “Department or” from the title and from Section 80044(a) and to include the reference to Health and Safety Code Section 1526.5.

Factual Basis:

These amendments are necessary for clarity and consistency. The term “the Department” is gradually being repealed from the General Licensing Requirements in favor of the term “licensing agency.” Since certain counties (under contract with the California Department of Social Services (CDSS)) and foster family agencies (licensed by the CDSS) may also function as licensing bodies, the term “licensing agency” is the more accurate term for use in the general licensing regulations.

Sections 80044(a)(1) and (a)(2)

Specific Purpose:

The specific purpose of these amendments is to correct typographical errors in existing handbook.

Factual Basis:

These amendments are necessary for clarity and consistency.

Section 80044(a)(3)

Specific Purpose:

The specific purpose of these amendments is to delete handbook language that no longer appears in statute and replace it with current language.

Factual Basis:

These amendments are necessary for clarity and consistency. They incorporate into handbook new language in Health and Safety Code Section 1534 regarding the frequency of licensing site visits--language added to statute by Assembly Bill (AB) 1752 (Chapter 225, Statutes of 2003) (the budget trailer bill).

Section 80044(a)(4)

Specific Purpose:

The specific purpose of these amendments is to correct a Health and Safety Code reference; to delete handbook language that is not directly relevant to the regulation section; and to correct typographical errors.

Factual Basis:

These amendments are necessary for clarity and consistency. The deleted handbook language was confusing because it did not pertain directly to the topic of the section. The topic of this section is the inspection authority of the licensing agency, whereas the deleted handbook language pertains to complaint processes and to the right of any person to inspect a facility. The remaining handbook language is appropriate to retain because it clarifies the right and obligation of the licensing agency to make an on-site inspection of a facility in response to a complaint.

Sections 80044(b)

Specific Purpose:

The specific purpose of these amendments is to delete the term “Department or” and to repeal references to the inspecting and auditing of client or facility records.

Factual Basis:

These amendments are necessary for clarity and consistency. As indicated in the “Factual Basis” under Section 80044(a), “Department or” has been replaced by “licensing agency” as the favored term for use in the General Licensing Requirements. The language regarding the inspecting and auditing of client or facility records has been moved and incorporated into proposed Section 80044(c), which contains express language regarding the licensing agency’s authority with respect to records.

Section 80044(b)(1)

Specific Purpose:

The specific purpose of these amendments is to make editorial changes, including repealing language regarding the examination of facility records.

Factual Basis:

These amendments are necessary for clarity and consistency. The addition of the phrase “ensure that” is necessary to clarify that the licensee does not have to personally perform this duty, but is nevertheless responsible for seeing that it is carried out. The repealed language regarding the examination of facility records has been moved and incorporated into proposed Section 80044(c)(1) for clarity and for consistency with proposed Section 80044(c).

Section 80044(c)

Specific Purpose:

The specific purpose of this section is to adopt explicit language concerning the licensing agency’s authority to inspect, audit, copy, and remove (if necessary for copying) facility records; and to reference additional related regulatory sections that apply.

Factual Basis:

This section is necessary for clarity and consistency. It expressly delineates the licensing agency’s authority with respect to inspecting, auditing, copying, and removing client or facility files upon demand during normal business hours.

Current laws and regulations give licensing staff the authority to enter and inspect all licensed residential and day care facilities without advance notice; and, in some situations, to reproduce client and facility records. They do not specifically address the issue of whether licensing staff have the authority to actually remove records from licensed residential and day care facilities in order to copy them.

A 2000 federal district court decision held that licensing staff cannot remove records from a licensed child care center for copying unless permitted by regulation or the licensee consents to the removal of the records (*Golden Day Schools, Inc. v. Pirillo* (C.D. Cal 2000) 118 Federal Supplement 2d 1037). Although the *Golden Day* decision applies specifically to child care centers, the issue of removing records for the purpose of copying them needs to be consistently addressed across licensing facility categories so that the licensing agency can effectively carry out its mandated functions.

Section 80044(c)(1)

Specific Purpose:

The specific purpose of this section is to move and incorporate language regarding the examination of records from existing Section 80044(b)(1) into proposed Section 80044(c)(1).

Factual Basis:

This adoption is necessary for clarity and consistency. The language in this section corresponds to language regarding records in proposed Section 80044(c).

Section 80044(d) (Renumbered)

Specific Purpose:

The specific purpose of these amendments is to renumber the section and to make editorial changes.

Factual Basis:

These amendments are necessary for clarity and consistency. Existing Section 80044(c) was renumbered to Section 80044(d) to accommodate the adoption of the new Section 80044(c). The term “Department or” was repealed for consistency with the use of “licensing agency” as the favored term in the General Licensing Requirements. The term “which” was changed to “that” to correct a grammatical error.

Section 80045(a)(1)

Specific Purpose:

The specific purpose of these amendments is to make the statutory citation in handbook more specific; to add the term “in part”; and to delete handbook language that no longer appears in statute and replace it with current language.

Factual Basis:

These amendments are necessary for clarity and consistency. They incorporate into handbook new language in Health and Safety Code Section 1534 regarding the frequency of licensing site visits--language added to statute by AB 1752 (Chapter 225, Statutes of 2003) (the budget trailer bill).

Section 80045(a)(2) et seq.

Specific Purpose/Factual Basis:

The specific purpose/factual basis of this amendment is to repeal unnecessary language that may confuse the reader and to add “(a)” and “(b)” to the handbook language for clarity.

Section 80066(a)

Specific Purpose:

The specific purpose of these amendments is to make editorial changes.

Factual Basis:

These amendments are necessary for clarity and consistency. The addition of the phrase “the licensee shall ensure that” is necessary to clarify that the licensee does not have to perform this duty personally, but is nevertheless responsible for seeing that it is carried out.

Section 80066(a)(6)

Specific Purpose:

The specific purpose of these amendments is to repeal chapter references and replace them with language referencing “licensing regulations for the type of facility in which the employee works.”

Factual Basis:

These amendments are necessary for clarity and to make the regulations more “user-friendly.” Chapter references alone are confusing and may not apply.

Section 80066(a)(10)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to make an editorial change for clarity.

Section 80066(c)

Specific Purpose:

The specific purpose of this section is to adopt explicit language concerning the licensing agency’s authority to inspect, audit, copy, and remove (if necessary for copying) personnel records; and to stipulate that removal of records is subject to the requirements in the succeeding sections.

Factual Basis:

This section is necessary for clarity and for consistency with proposed Section 80044(c). It expressly delineates the licensing agency's authority in these areas with regard to personnel records. Please see the "Factual Basis" under Section 80044(c).

Section 80066(c)(1)

Specific Purpose:

The specific purpose of this section is to prohibit licensing representatives from removing any current emergency or health-related information for current employees unless the information is otherwise available.

Factual Basis:

This section is necessary to protect employees in the event of an emergency. Without this information on file at the facility at all times, an employee could experience a health-related emergency (e.g., a heart attack) and other facility staff would not be able to call the employee's physician or family--or to provide emergency personnel with potentially important information about the employee's overall health condition. At the same time, this section gives the licensing agency some flexibility in that the specified records can be removed as long as the same information is available in another document or format.

Section 80066(c)(2)

Specific Purpose:

The specific purpose of this section is to require a licensing representative to prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the administrator or designee.

Factual Basis:

This section is necessary to hold the licensing agency accountable for records that are removed for copying. The list acts as a receipt of the records removed for the administrator or designee.

Section 80066(c)(3)

Specific Purpose:

The specific purpose of this section is to establish a time line for the licensing agency to return records removed from a facility; and to stipulate that the records must be returned undamaged and in good order.

Factual Basis:

This section is necessary to ensure that the licensing agency does not keep records for an unreasonable length of time. The time line was arrived at because it would give the licensing agency time to copy the records—especially in cases where significant travel was involved on the part of licensing representatives—while at the same time not inconveniencing the facility for too long a period. It is anticipated that most records removed would be returned in fewer than three days—ideally, on the same day. In addition, this section is necessary to ensure that records are not returned to the facility damaged or in disarray.

Section 80066(d) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of this amendment is to renumber existing Section 80066(c) to Section 80066(d) to accommodate the addition of proposed Section 80066(c).

Section 80066(e) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose/factual basis is to make an editorial change for clarity and consistency; and to renumber existing Section 80066(d) to Section 80066(e) to accommodate the addition of proposed Section 80066(c). It was no longer necessary for this section to contain a provision regarding records being available to the licensing agency for review. That provision is now contained in proposed Section 80066(c).

Section 80066(e)(1) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of these amendments is to add a cross-reference for clarity; and to renumber existing Section 80066(d)(1) to Section 80066(e)(1) to accommodate the addition of proposed Section 80066(c).

Final Modification:

Following the public hearing, the phrase “upon request” was repealed for clarity and consistency. Repealing the words “upon request” is necessary for consistency with proposed Section 80066(c), which is cross-referenced in this section. Section 80066(c) states that personnel records must be available to the licensing agency “upon demand” during normal business hours.

Section 80066(f) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of this amendment is to renumber existing Section 80066(e) to Section 80066(f) to accommodate the addition of proposed Section 80066(c).

Section 80070(a)

Specific Purpose:

The specific purpose of these amendments is to make editorial changes.

Factual Basis:

These amendments are necessary for clarity and consistency. The addition of the phrase “the licensee shall ensure that” is necessary to clarify that the licensee does not have to perform this duty personally, but is nevertheless responsible for seeing that it is carried out.

Section 80070(d)

Specific Purpose:

The specific purpose of these amendments is to add explicit language concerning the licensing agency’s authority to inspect, audit, copy, and remove (if necessary for copying) client records; and to stipulate that removal of records is subject to the requirements in the succeeding sections.

Factual Basis:

These amendments are necessary for clarity and for consistency with Section 80044(c). The amendments expressly delineate the licensing agency’s authority in these areas with regard to client records. Please also see the “Factual Basis” under Section 80044(c).

Sections 80070(d)(1) et seq.

Specific Purpose:

The specific purpose of these amendments is to prohibit the removal of specified current records for current clients unless the same information is otherwise readily available.

Factual Basis:

These sections are necessary to ensure that specified current information for current clients (most of which is health-related) is always available at the facility in the event of an emergency; and to ensure that appropriate care is provided on a day-to-day basis. This is necessary to protect the health and safety of clients at all times. Removal of critical

information for even a few hours is not acceptable because emergencies are by their nature unpredictable—especially if clients are fragile or vulnerable. At the same time, Section 80070(d)(1) gives the licensing agency some flexibility in that the records can be removed if the same information is available in another document or format.

Section 80070(d)(1)(A) is necessary to ensure that the name, address, and telephone number of a client’s authorized representative(s) are available at the facility at all times.

Section 80070(d)(1)(B) is necessary to ensure that the names, addresses, and telephone numbers of a client’s health providers are available at the facility at all times.

Section 80070(d)(1)(C) is necessary to ensure that medical assessments are available at the facility at all times.

Section 80070(d)(1)(D) is necessary to ensure that records of any current illness or injury is available at the facility at all times.

Section 80070(d)(1)(E) is necessary to ensure that records of current medications are available at the facility at all times.

Section 80070(d)(1)(F) is necessary to ensure that Restricted Health Condition Care Plans are available at the facility at all times.

Section 80070(d)(1)(G) is necessary to ensure that functional assessments are available at the facility at all times.

Section 80070(d)(1)(H) is necessary to ensure that mental health assessments are available at the facility at all times.

Section 80070(d)(1)(I) is necessary to ensure that any other records containing current emergency or health-related information are available at the facility at all times.

Section 80070(d)(2)

Specific Purpose:

The specific purpose of this section is to require a licensing representative to prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the administrator or designee.

Factual Basis:

This section is necessary to hold the licensing agency accountable for records that are removed for copying. The list acts as a receipt of the records removed for the administrator or designee.

Section 80070(d)(3)

Specific Purpose:

The specific purpose of this section is to establish a time line for the licensing agency to return records removed from a facility; and to stipulate that the records must be returned undamaged and in good order.

Factual Basis:

This section is necessary to ensure that the licensing agency does not keep the records for an unreasonable length of time. It is also necessary to ensure that the records are not returned to the facility damaged or in disarray. Please see the “Factual Basis” under Section 80066(c)(3).

Section 80070(e) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of this amendment is to renumber existing Section 80070(d)(1) to Section 80070(e) for clarity and consistency. This amendment ensures that overall Section 80070 has a logical flow.

Section 80070(f) (Renumbered)

Specific Purpose/Factual Basis:

This section is renumbered for clarity.

Section 80070(g) (Renumbered)

Specific Purpose/Factual Basis:

This section is renumbered and editorial changes are made for clarity.

Group Homes, Title 22, Division 6, Chapter 5

Section 84063(a)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of these amendments is to make minor editorial changes for clarity and consistency.

Section 84063(a)(10)

Specific Purpose:

The specific purpose of this section is to add explicit language concerning the licensing agency's authority to inspect, audit, copy, and remove (if necessary for copying) minutes of group home board of directors' meetings; and to stipulate that removal of minutes is subject to the requirements in the succeeding sections.

Factual Basis:

This section is necessary for clarity and consistency. It expressly delineates the licensing agency's authority with regard to inspecting, auditing, copying, and removing minutes. In addition, this section is consistent with language being proposed for use in the regulations for all other licensed residential community care facilities. Please see the "Factual Basis" under Section 80044(c).

Section 84063(a)(10)(A)

Specific Purpose:

The specific purpose of this section is to require a licensing representative to prepare a list of the minutes to be removed, sign and date the list upon removal of the minutes, and leave a copy of the list with the administrator or designee.

Factual Basis:

This section is necessary to hold the licensing agency accountable for any minutes that are removed for copying. The list acts as a receipt for the administrator or designee of the minutes removed.

Section 84063(a)(10)(B)

Specific Purpose:

The specific purpose of this section is to establish a time line for the licensing agency to return any minutes removed from a facility; and to stipulate that the minutes must be returned undamaged and in good order.

Factual Basis:

This section is necessary to ensure that the licensing agency does not keep the minutes for an unreasonable length of time. It is also necessary to ensure that the minutes are not returned to the facility undamaged or in disarray. Please see the "Factual Basis" under Section 80066(c)(3).

Residential Care Facilities for the Elderly, Title 22, Division 6, Chapter 8

Section 87344, Title

Specific Purpose:

The specific purpose of this amendment is to make the section title more descriptive by adding “of the Licensing Agency.”

Factual Basis:

This amendment is necessary for clarity; the “inspection authority” described in this section applies to the licensing agency and not to any other entities or persons. In addition, this amendment is consistent with the titles of similar sections in other facility categories (e.g., Section 80044 of the General Licensing Requirements).

Section 87344(a)

Specific Purpose:

The specific purpose of these amendments is (1) to repeal “Department” and replace it with “licensing agency” and (2) to correct a minor typographical/grammatical error.

Factual Basis:

These amendments are necessary for clarity and consistency. The term “the Department” is gradually being repealed from regulations governing Residential Care Facilities for the Elderly (RCFE) and certain other licensing categories in favor of the term “the licensing agency.” Since certain counties (under contract with the CDSS) and foster family agencies (licensed by the CDSS) may also function as licensing bodies, it is more accurate to use the term “the licensing agency,” even if a particular facility category such as RCFE is licensed wholly by the State.

Section 87344(b)

Specific Purpose:

The specific purpose of these amendments is to make editorial changes.

Factual Basis:

These amendments are necessary for clarity and consistency. The addition of the phrase “the licensee shall ensure” is necessary to clarify that the licensee does not have to personally perform this duty, but is nevertheless responsible for seeing that it is carried out. The term “resident” is used throughout the RCFE regulations to refer to a person who is receiving services in an RCFE.

Section 87344(c)

Specific Purpose:

The specific purpose of this section is to adopt explicit language concerning the licensing agency's authority to inspect, audit, copy, and remove (if necessary for copying) resident or facility records; and to refer the reader to other pertinent regulatory sections.

Factual Basis:

This section is necessary for clarity and consistency. It expressly establishes the licensing agency's authority with regard to inspecting, auditing, copying, and removing resident or facility records. In addition, this section is consistent with language being proposed for use in the regulations for other licensing facility categories. Please see the "Factual Basis" under Section 80044(c).

Final Modification:

Following the public hearing, a cross-reference was corrected for clarity and consistency.

Section 87344(d) (Renumbered)

Specific Purpose:

The specific purpose of these amendments is to renumber the section; to make minor editorial changes; and to add cross-references.

Factual Basis:

These amendments are necessary for clarity and consistency. Existing Section 87344(c) was renumbered to Section 87344(d) to accommodate the addition of proposed Section 87344(c). The term "Department" was changed to "licensing agency" for consistency with changes being made elsewhere in the regulations. (Please see the "Factual Basis" under Section 87344(a).) Moreover, cross-references to Health and Safety Code sections that were added to handbook were incorporated for clarity. (Please see the "Specific Purpose" and "Factual Basis" for Sections 87344(d)(2), (d)(3) and (d)(4) below.)

Section 87344(d)(1) (Renumbered)

Specific Purpose:

The specific purpose of these amendments is to renumber the section and to correct a typographical error in handbook.

Factual Basis:

These amendments are necessary for clarity and consistency. Existing Section 87344(c)(1) was renumbered to Section 87344(d)(1) to accommodate the addition of proposed Section 87344(c). In addition, a typographical error in handbook was corrected for consistency with language used in Health and Safety Code Section 1569.24.

Sections 87344(d)(2) through (d)(4)

Specific Purpose:

The specific purpose of these sections is to adopt to handbook statutory language that authorizes the licensing agency to enter and inspect a facility providing services to residents in a licensed or unlicensed RCFE.

Factual Basis:

These sections are necessary for clarity and consistency. It appears to have been an oversight that this language was not incorporated into handbook earlier.

Section 87344(d)(2) is necessary to provide the statutory language that establishes the licensing agency's authority to enter and inspect a facility at any time to prevent violations of the RCFE Act. The addition of this section is consistent with Section 80044(a)(2) of the General Licensing Requirements; Section 87844(a)(2) of the regulations for Residential Care Facilities for the Chronically Ill (RCFCI); and with similar provisions in handbook for foster family homes and child care facilities.

Section 87344(d)(3) is necessary to provide the statutory language that establishes the licensing agency's authority and mandate to conduct licensing site visits. The addition of this section is consistent with Section 80044(a)(3) of the General Licensing Requirements; Section 87845(b) of the RCFCI regulations; and with similar provisions in handbook for foster family homes and child care facilities.

Section 87344(d)(4) is necessary to provide the statutory language that establishes the licensing agency's authority and mandate to make an onsite visit in response to a complaint. The addition of this section is consistent with Section 80044(a)(4)(C) of the General Licensing Requirements; Section 87844(b)(3)(A)2. of the RCFCI regulations; and with similar provisions in handbook for foster family homes and child care facilities.

Section 87345(a)

Specific Purpose:

The specific purpose of these amendments is to correct facility category terminology; to repeal outdated language regarding annual visits to RCFEs; and to reference current RCFE visit requirements in Health and Safety Code Section 1569.33.

Factual Basis:

These amendments are necessary for clarity and consistency; and to comply with AB 1752 (Chapter 225, Statutes of 2003) (the budget trailer bill), which amended Health and Safety Code Section 1569.33 to set forth new criteria for the licensing agency to visit RCFEs.

In addition, the term “community care facility” was corrected to read “residential care facility for the elderly” for clarity and for consistency with the terminology used in the rest of the RCFE regulations.

Section 87345(a)(1)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of this section is to adopt the new RCFE visit requirements of Health and Safety Code Section 1569.33 to handbook for clarity and consistency.

Section 87345(b)

Specific Purpose:

The specific purpose of these amendments is to repeal “Department” and to correct terminology regarding facility visits.

Factual Basis:

These amendments are necessary for clarity and consistency. As indicated previously, the term “the licensing agency” (and not “the Department”) is now the preferred terminology for use in the RCFE regulations. In addition, it is more precise and correct to say that the licensing agency monitors facilities for compliance with licensing laws and regulations. Licensing field staff do not cite facilities for lack of compliance with “standards,” but for lack of compliance with licensing laws and regulations.

Section 87566(a)

Specific Purpose:

The specific purpose of these amendments is to make editorial changes.

Factual Basis:

These amendments are necessary for clarity and consistency. The addition of the phrase “the licensee shall ensure” is necessary to clarify that the licensee does not have to perform this duty personally, but is nevertheless responsible for seeing that it is carried out.

Section 87566(a)(4)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of these amendments is to make editorial/grammatical changes for clarity and consistency.

Section 87566(a)(7)(A) and (B) (Deleted)

Specific Purpose:

The specific purpose of these amendments is to delete handbook.

Factual Basis:

These amendments are necessary for clarity.

Section 87566(a)(7)(A) doesn't add anything to this section; and, if anything, is confusing. Because it's only a sentence fragment without a clear context or relationship to Section 87566(a)(7), it's difficult to ascertain its purpose. Thus, Section 87566(a)(7)(A) is being deleted for clarity and to make the regulations more "user-friendly."

Section 87566(a)(7)(B) appears to be included to lend statutory support to Section 87566(a)(7), which requires all employees to provide information to the licensing agency regarding past employment history. However, it is not necessary to duplicate the regulatory requirement in handbook. In addition, the existing handbook section is somewhat confusing because it does not stand alone; it can only be fully understood by consulting cross-references in the Health and Safety Code. Thus, Section 87566(a)(7)(B) is being deleted. Instead, Health and Safety Code Section 1569.17(c) is being added to the Reference citations at the end of Section 87566.

Section 87566(e) (Renumbered to Section 87566(f) post hearing)

Specific Purpose:

The specific purpose of this section is to adopt explicit language concerning the licensing agency's authority to inspect, audit, copy and remove (if necessary for copying) personnel records; and to stipulate that removal of records is subject to the requirements in the succeeding sections.

Factual Basis:

This section is necessary for clarity and consistency. It expressly delineates the licensing agency's authority with regard to inspecting, auditing, copying, and removing personnel records. In addition, this section is consistent with language being proposed for use in the regulations for all other licensed residential community care facilities. Please see the "Factual Basis" under Section 80044(c).

Final Modification:

Following the public hearing, Section 87566(e) was renumbered to Section 87566(f) because a regulations package that became effective July 3, 2004 (Care of Persons with Dementia in Residential Care Facilities for the Elderly) added a new subsection - making it necessary to renumber all succeeding subsections.

Section 87566(e)(1) (Renumbered to Section 87566(f)(1) post hearing)

Specific Purpose:

The specific purpose of this section is to prohibit the removal of any current emergency or health-related information for current employees unless the information is otherwise readily available.

Factual Basis:

This section is necessary to ensure that current emergency or health-related information for current employees is always available at the facility in the event of an emergency. This is necessary to protect the health and safety of employees. At the same time, this section gives the licensing agency some flexibility in that those same records can be removed as long as the same information is available in another document or format. Please see the "Factual Basis" under Section 80066(c)(1).

Final Modification:

Following the public hearing, Section 87566(e) was renumbered to Section 87566(f) because a regulations package that became effective July 3, 2004 (Care of Persons with Dementia in Residential Care Facilities for the Elderly) added a new subsection - making it necessary to renumber all succeeding subsections.

Section 87566(e)(2) (Renumbered to Section 87566(f)(2) post hearing)

Specific Purpose:

The specific purpose of this section is to require a licensing representative to prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the administrator or designee.

Factual Basis:

This section is necessary to hold the licensing agency accountable for records that are removed for copying. The list acts as a receipt for the administrator or designee of the minutes removed.

Final Modification:

Following the public hearing, Section 87566(e) was renumbered to Section 87566(f) because a regulations package that became effective July 3, 2004 (Care of Persons with Dementia in Residential Care Facilities for the Elderly) added a new subsection - making it necessary to renumber all succeeding subsections.

Section 87566(e)(3) (Renumbered to Section 87566(f)(3) post hearing)

Specific Purpose:

The specific purpose of this section is to establish a time line for the licensing agency to return records removed from a facility; and to stipulate that the records must be returned undamaged and in good order.

Factual Basis:

This section is necessary to ensure that the licensing agency does not keep the records for an unreasonable length of time. It is also necessary to ensure that the records are not returned to the facility damaged or in disarray. Please see the "Factual Basis" under Section 80066(c)(3).

Final Modification:

Following the public hearing, Section 87566(e) was renumbered to Section 87566(f) because a regulations package that became effective July 3, 2004 (Care of Persons with Dementia in Residential Care Facilities for the Elderly) added a new subsection - making it necessary to renumber all succeeding subsections.

Sections 87566(f) through (h) (Renumbered to Sections 87566(g) through (h) post hearing)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of these amendments is to renumber existing sections to accommodate the addition of proposed Section 87566(e).

Final Modification:

Following the public hearing, the changes shown below were made to these sections:

Section 87566(f) was renumbered to Section 87566(g) to accommodate the renumbering of previous sections. The phrase “and [all personnel records shall] be available to the licensing agency for review” was repealed for clarity and consistency; and to avoid redundancy. This phrase is no longer necessary in this section because proposed Section 87566(f) now speaks to the requirement that personnel records be available to the licensing agency for review.

Section 87566(f)(1) was renumbered to Section 87566(g)(1) to accommodate the renumbering of previous sections. In addition, an editorial change was made and a cross-reference was added for clarity and consistency. The repeal of the phrase “upon request” is necessary for consistency with proposed Section 87566(f), which states that personnel records must be available to the licensing agency “upon demand” during normal business hours. The cross-reference is necessary to refer the reader to a related section that clarifies requirements regarding making personnel records available to the licensing agency.

Existing Section 87566(f)(2) was repealed for clarity and consistency; and to avoid redundancy. The provisions in existing Section 87566(f)(2) have been consolidated into and superseded by proposed Section 87566(f).

Section 87566(g) was renumbered to Section 87566(h) to accommodate the renumbering of previous sections.

Section 87570(a)

Specific Purpose:

The specific purpose of these amendments is to make editorial changes.

Factual Basis:

These amendments are necessary for clarity and consistency. The addition of the phrase “the licensee shall ensure that” is necessary to clarify that the licensee does not have to perform this duty personally, but is nevertheless responsible for seeing that it is carried out. The term “the Department” has been changed to “licensing agency” because “licensing agency” is now the preferred term for use in the RCFE regulations. Please see the “Factual Basis” under Section 87344(a).

Section 87570(b)(6)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of this amendment is to correct a cross-reference and to make minor editorial changes for clarity and consistency.

Final Modification:

Following the public hearing, corrections to the cross-reference were dropped because the same corrections were made in another regulations package (Care of Persons with Dementia in Residential Care Facilities for the Elderly) that became effective July 3, 2004.

Section 87570(d)

Specific Purpose:

The specific purpose of this section is to renumber and add explicit language concerning the licensing agency's authority to inspect, audit, copy, and remove (if necessary for copying) resident records; and to stipulate that removal of records is subject to the requirements in the succeeding sections. This section is also renumbered for clarity.

Factual Basis:

This section is necessary for clarity and consistency. It expressly delineates the licensing agency's authority with regard to inspecting, auditing, copying, and removing resident records. In addition, this section is consistent with language being proposed for use in the regulations for all other licensed residential community care facilities. Please see the "Factual Basis" under Section 80044(c).

Section 87570(d)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to adopt new language which will prohibit the removal of specified current records for current residents unless the same information is otherwise readily available.

Factual Basis:

This section is necessary to ensure that specified current information for current residents is always available at the facility in the event of an emergency; and to ensure that appropriate care is provided on a day-to-day basis. This is necessary to protect the health and safety of residents at all times. Removal of critical information for even a few hours is not acceptable because emergencies are by their nature unpredictable—especially when residents are frail and elderly. At the same time, this section gives the licensing agency some flexibility in that the specified records can be removed if the same information is available in another document or format.

Section 87570(d)(1)(A) is necessary to ensure that the name and address of the resident's clergyman or religious advisor is available at the facility at all times.

Section 87570(d)(1)(B) is necessary to ensure that information about the resident's responsible person(s) is available at the facility at all times.

Section 87570(d)(1)(C) is necessary to ensure that information on the resident's physician and dentist is available at the facility at all times.

Section 87570(d)(1)(D) is necessary to ensure that a current medical assessment for the resident is available at the facility at all times.

Section 87570(d)(1)(E) is necessary to ensure that information about the resident's allowable health condition, such as diabetes or the need for a colostomy/ileostomy, is available at the facility at all times.

Section 87570(d)(1)(F) is necessary to ensure that information about the resident's ambulatory status is available at the facility at all times.

Section 87570(d)(1)(G) is necessary to ensure that a continuing record of any illness, injury, or medical or dental care, when it affects the resident's ability to function, or services needed, is available at the facility at all times.

Section 87570(d)(1)(H) is necessary to ensure that records of the resident's current medications are available at all times.

Section 87570(d)(1)(I) is necessary to ensure that any other records containing current emergency or health-related information are available at all times.

Section 87570(d)(2)

Specific Purpose:

The specific purpose of this section is to require a licensing representative to prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the administrator or designee.

Factual Basis:

This section is necessary to hold the licensing agency accountable for records that are removed for copying. The list acts as a receipt for the administrator or designee of the minutes removed.

Section 87570(d)(3)

Specific Purpose:

The specific purpose of this section is to establish a time line for the licensing agency to return records removed from a facility; and to stipulate that the records must be returned undamaged and in good order.

Factual Basis:

This section is necessary to ensure that the licensing agency does not keep the records for an unreasonable length of time. It is also necessary to ensure that the records are not returned to the facility damaged or in disarray. Please see the “Factual Basis” under Section 80066(c)(3).

Section 87570(e) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of this amendment is to renumber existing Section 87570(d) to Section 87570(e) to accommodate the addition of proposed Section 87570(d).

Section 87571(a) (Repealed)

Specific Purpose:

The specific purpose is to repeal existing Section 87571(a), which contains language specifying that the provisions of this section shall apply to all licensed facilities.

Factual Basis:

Repealing this section is necessary for consistency and to avoid redundancy. All of the RCFE regulations apply to all licensed RCFEs, so it is redundant, unnecessary, and inconsistent with other regulatory sections to specifically state that the provisions of this section shall apply to licensed RCFEs.

Section 87571(a) (Renumbered)

Specific Purpose:

The specific purpose of these amendments is to renumber the section and to make several editorial changes.

Factual Basis:

These amendments are necessary for clarity and consistency. The section is being renumbered to accommodate the repeal of existing Section 87571(a). The addition of the phrase “the licensee shall ensure that” is necessary to clarify that the licensee does not have to perform this duty personally, but is nevertheless responsible for seeing that it is carried out. Language regarding the need for the current register to be available to the licensing agency has been moved and incorporated into proposed Section 87571(b), which contains language about the licensing agency’s authority with respect to registers of residents.

Sections 87571(a)(1), (a)(2) and (a)(3) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of these amendments is to renumber existing Sections 87571(a)(1)(A), (a)(1)(B) and (a)(1)(C) to proposed Sections 87571(a)(1), (a)(2) and (a)(3) to accommodate the repeal of existing Section 87571(a); and to make minor editorial changes for clarity and consistency.

Section 87571(b)

Specific Purpose:

The specific purpose of this section is to adopt explicit language concerning the licensing agency’s authority to inspect, audit, copy and remove (if necessary for copying) registers of residents.

Factual Basis:

This section is necessary for clarity and consistency. It expressly delineates the licensing agency’s authority with regard to inspecting, auditing, copying, and removing (if necessary for copying) registers of residents. In addition, this section is consistent with language being proposed for use in the regulations for all other licensed residential community care facilities. Please see the “Factual Basis” under Section 80044(c).

Section 87571(b)(1)

Specific Purpose:

The specific purpose of this section is to prohibit the removal of current registers of residents unless the information is otherwise readily available.

Factual Basis:

This section is necessary to ensure that a current register of residents is always available at the facility in the event of an emergency and to ensure the smooth functioning of the facility on a day-to-day basis. This is necessary to protect the health and safety of residents. At the

same time, this section gives the licensing agency some flexibility in that a copy of a current register may be removed as long as the same information is available in another document or format.

Section 87571(b)(2)

Specific Purpose:

The specific purpose of this section is to require a licensing representative to prepare a list of the registers to be removed, sign and date the list upon removal of the registers, and leave a copy of the list with the administrator or designee.

Factual Basis:

This section is necessary to hold the licensing agency accountable for registers that are removed for copying. The list acts as a receipt for the administrator or designee of the registers removed.

Section 87571(b)(3)

Specific Purpose:

The specific purpose of this section is to establish a time line for the licensing agency to return registers removed from a facility; and to stipulate that the registers must be returned undamaged and in good order.

Factual Basis:

This section is necessary to ensure that the licensing agency does not keep the registers for an unreasonable length of time. It is also necessary to ensure that the registers are not returned to the facility damaged or in disarray. Please see the “Factual Basis” under Section 80066(c)(3).

Section 87571(c) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of these amendments is to renumber existing Section 87571(a)(2) to Section 87571(c) to accommodate the adoption of proposed Section 87571(b). An editorial change was also made for clarity.

Section 87571(c)(1) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of this amendment is to renumber Section 87571(a)(2)(A) to Section 87571(c)(1) to accommodate the renumbering of previous sections, as indicated above.

Post-Hearing Modification

Section 87725(a)(4)(B)

Specific Purpose:

This section was added to the regulations following the public hearing by another regulations package (Care of Persons with Dementia in Residential Care Facilities for the Elderly) that became effective July 3, 2004. This section was amended following the public hearing to make the language and sentence structure more consistent with that used in other similar sections (e.g., in Section 87866(c)); and to add a cross-reference.

Factual Basis:

These amendments are necessary for clarity and consistency. For example, the new language clarifies that the material would only be removed from the facility if necessary for copying. The cross-reference is necessary to refer the reader to relevant regulatory provisions governing the conditions under which records or other material may be removed from a facility for copying. Please also see the factual basis for Section 87344(c).

Post-Hearing Modification

Section 87725.1(a)(2)(G)(1.)

Specific Purpose:

This section was added to the regulations following the public hearing by another regulations package (Care of Persons with Dementia in Residential Care Facilities for the Elderly) that became effective July 3, 2004. This section was amended following the public hearing to make the language and sentence structure more consistent with that used in other similar sections (e.g., in Section 87866(c)); and to add a cross reference.

Factual Basis:

These amendments are necessary for clarity and consistency. For example, the new language clarifies that the material would only be removed from the facility if necessary for copying. The cross-reference is necessary to refer the reader to relevant regulatory provisions governing the conditions under which records or other material may be removed from a facility for copying. Please also see the factual basis for Section 87344(c).

Residential Care Facilities for the Chronically Ill, Title 22, Division 6, Chapter 8.5

Section 87844 Title

Specific Purpose/Factual Basis:

The specific purpose/factual basis of this amendment is to repeal the phrase “or licensing agency” for clarity and consistency. (Note: The term “the Department” is used extensively throughout the regulations for RCFCIs; therefore, it is not being repealed from the RCFCI regulations, as is the case with the regulations for other residential facility categories.)

Section 87844(c)

Specific Purpose:

The specific purpose of these amendments is to make editorial changes, including repealing references to the inspecting and auditing of resident or facility records.

Factual Basis:

These amendments are necessary for clarity and consistency. The language regarding the inspecting and auditing of resident or facility records has been moved and incorporated into proposed Section 87844(d), which contains language regarding the licensing agency’s (the Department’s) authority with respect to records.

Section 87844(c)(1)

Specific Purpose:

The specific purpose of these amendments is to make editorial changes, including repealing language regarding the examination of facility records.

Factual Basis:

These amendments are necessary for clarity and consistency. The addition of the phrase “the licensee shall ensure” is necessary to clarify that the licensee does not have to personally perform this duty, but is nevertheless responsible for seeing that it is carried out. The repealed language regarding the examination of facility records has been moved and incorporated into proposed Section 87844(d)(1) for clarity and for consistency with proposed Section 87844(d).

Section 87844(d)

Specific Purpose:

The specific purpose is to adopt explicit language concerning the Department's authority to inspect, audit, copy resident or facility records, and remove (if necessary for copying) resident or facility records; and to refer the reader to other pertinent sections.

Factual Basis:

This section is necessary for clarity and consistency. It expressly delineates the Department's authority with regard to inspecting, auditing, copying, and removing resident or facility records. In addition, this section is consistent with language being proposed for use in the regulations for all other licensed residential community care facilities. Please see the "Factual Basis" under Section 80044(c).

Section 87844(d)(1)

Specific Purpose:

The specific purpose of this section is to move and incorporate language regarding the examination of records from Section 87844(c)(1) into proposed Section 87844(d)(1).

Factual Basis:

This adoption is necessary for clarity and consistency. With the addition of express language regarding the Department's authority with respect to records, the language in this section now logically follows that in proposed Section 87844(d).

Section 87844(e) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of this amendment is to renumber Section 87844(d) to Section 87844(e) to accommodate the addition of proposed Sections 87844(d) and (d)(1).

Section 87866(a)

Specific Purpose:

The specific purpose of these amendments is to make editorial changes.

Factual Basis:

These amendments are necessary for clarity and consistency. The addition of the phrase “the licensee shall ensure that” is necessary to clarify that the licensee does not have to perform this duty personally, but is nevertheless responsible for seeing that it is carried out.

Section 87866(c)

Specific Purpose:

The specific purpose of this section is to adopt explicit language concerning the licensing agency’s authority to inspect, audit, copy, and remove (if necessary for copying) personnel records; and to stipulate that removal of records is subject to the requirements in the succeeding sections.

Factual Basis:

This section is necessary for clarity and consistency. It expressly delineates the Department’s authority with regard to inspecting, auditing, copying, and removing personnel records. In addition, this section is consistent with language being proposed for use in all other licensed residential community care facilities. Please see the “Factual Basis” under Section 80044(c).

Section 87866(c)(1)

Specific Purpose:

The specific purpose of this section is to prohibit the removal of any current emergency or health-related information for current employees unless the information is otherwise readily available.

Factual Basis:

This section is necessary to ensure that current emergency or health-related information for current employees is always available at the facility in the event of an emergency. This is necessary to protect the health and safety of employees. At the same time, this section gives the Department some flexibility in that those same records can be removed as long as the same information is available in another document or format. Please see the “Factual Basis” under Section 80066(c)(1).

Section 87866(c)(2)

Specific Purpose:

The specific purpose of this section is to require a licensing representative to prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the administrator or designee.

Factual Basis:

This section is necessary to hold the Department accountable for records that are removed for copying. The list acts as a receipt for the administrator or designee of the minutes removed.

Section 87866(c)(3)

Specific Purpose:

The specific purpose of this section is to establish a time line for the Department to return records removed from a facility; and to stipulate that the records must be returned undamaged and in good order.

Factual Basis:

This section is necessary to ensure that the Department does not keep the records for an unreasonable length of time. It is also necessary to ensure that the records are not returned to the facility damaged or in disarray. Please see the “Factual Basis” under Section 80066(c)(3).

Sections 87866(d), (e) and (f) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of these amendments is to renumber existing Sections 87866(c), (d) and (e) to Sections 87866(d), (e) and (f) to accommodate the addition of proposed Section 87866(c).

Final Modification:

Following the public hearing, in Section 87866(e), the phrase “and [all personnel records shall] be available to the licensing agency for review” was repealed for clarity and consistency; and to avoid redundancy. This phrase is no longer necessary in this section because proposed Section 87866(c) now speaks to the Department’s accessibility to personnel records.

In Section 87866(e)(1), an editorial change was made and a cross-reference was added for clarity and consistency. The repeal of the phrase “upon request” is necessary for

consistency with proposed Section 87866(c), which states that personnel records must be available to the Department “upon demand” during normal business hours. The cross-reference is necessary to refer the reader to a related section that clarifies requirements regarding the availability of personnel records to the Department. These changes are consistent with changes made to Section 87566(g)(1).

Section 87870(a)

Specific Purpose:

The specific purpose of these amendments is to make editorial changes.

Factual Basis:

These amendments are necessary for clarity and consistency. The addition of the phrase “the licensee shall ensure” is necessary to clarify that the licensee does not have to perform this duty personally, but is nevertheless responsible for seeing that it is carried out.

Section 87870(d)

Specific Purpose:

The specific purpose of this section is to add explicit language concerning the Department’s authority to inspect, audit, copy and remove (if necessary for copying) resident records; and to stipulate that removal of records is subject to the requirements in the succeeding sections.

Factual Basis:

This section is necessary for clarity and consistency. It expressly delineates the Department’s authority with regard to inspecting, auditing, copying, and removing resident records. In addition, this section is consistent with language being proposed for use in the regulations for all other licensed residential community care facilities. Please see the “Factual Basis” under Section 80044(c).

Section 87870(d)(1) et seq.

Specific Purpose:

These sections are being adopted to prohibit the removal of specified current records for current residents unless the same information is otherwise readily available.

Factual Basis:

These sections are necessary to ensure that specified current information (most of which is health-related) for current residents is always available at the facility in the event of an emergency; and to ensure that appropriate care is provided on a day-to-day basis. This is necessary to protect the health and safety of residents at all times. Removal of critical information for even a few hours is not acceptable because emergencies are by their nature unpredictable—especially when residents are ill or frail. At the same time, this section gives the Department some flexibility in that the specified records can be removed if the same information is available in another document or format.

Section 87870(d)(1)(A) is necessary to ensure that the name, address and telephone number of each resident’s authorized representative(s) are available at the facility at all times.

Section 87870(d)(1)(B) is necessary to ensure that the name, address, and telephone number of each resident’s health care providers are available at the facility at all times.

Section 87870(d)(1)(C) is necessary to ensure that a current medical assessment for each resident, including ambulatory status, is available at the facility at all times.

Section 87870(d)(1)(D) is necessary to ensure that the results of a resident’s tuberculosis skin tests are available at the facility at all times.

Section 87870(d)(1)(E) is necessary to ensure that a record of any current illness or injury requiring treatment by a physician or dentist, for which the facility provided assistance, is available at the facility at all times.

Section 87870(d)(1)(F) is necessary to ensure that a record of a resident’s current medications are available at the facility at all times.

Section 87870(d)(1)(G) is necessary to ensure that the name, address and telephone number of any person or agency responsible for the resident are available at the facility at all times.

Section 87870(d)(1)(H) is necessary to ensure that weekly weight records are available at the facility at all times.

Section 87870(d)(1)(I) is necessary to ensure that a copy of a resident’s signed “DO NOT Resuscitate Order” is available at the facility at all times.

Section 87870(d)(1)(J) is necessary to ensure that a copy of a resident’s signed Durable Power of Attorney for Health Care is available at the facility at all times.

Section 87870(d)(1)(K) is necessary to ensure that information regarding a resident’s individual services plan/team is available at the facility at all times.

Section 87870(d)(1)(L) is necessary to ensure that any other records containing current emergency or health-related information are available at all times.

Section 87870(d)(2)

Specific Purpose:

The specific purpose of this section is to require a licensing representative to prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the administrator or designee.

Factual Basis:

This section is necessary to hold the Department accountable for records that are removed for copying. The list acts as a receipt for the administrator or designee of the minutes removed.

Section 87870(d)(3)

Specific Purpose:

The specific purpose of this section is to establish a time line for the Department to return records removed from a facility; and to stipulate that the records must be returned undamaged and in good order.

Factual Basis:

This section is necessary to ensure that the Department does not keep the records for an unreasonable length of time. It is also necessary to ensure that the records are not returned to the facility damaged or in disarray. Please see the “Factual Basis” under Section 80066(c)(3).

Section 87870(e) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose/factual basis is to renumber Section 87870(d)(1) to Section 87870(e) to accommodate the addition of proposed Sections 87870(d)(1), (d)(2) and (d)(3); and to make a minor editorial change by deleting an unnecessary word.

Sections 87870(f) and (g) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose/factual basis is to renumber Sections 87870(e) and (f) to Sections 87870(f) and (g) to accommodate the renumbering of previous sections. In addition, minor editorial changes have been made to Section 87870(g) for clarity and consistency.

Foster Family Agencies (Title 22, Division 6, Chapter 9.5)

Section 88069.7(d)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of these amendments is to make minor editorial changes for clarity and consistency.

Section 88069.7(d)(1)

Specific Purpose:

The specific purpose of this amendment is to repeal the phrase “when required to do so by the Department.”

Factual Basis:

This amendment is necessary for clarity and consistency. The requirements for licensees to transmit copies of substantiated complaints to specified parties are statutory requirements in Health and Safety Code Section 1538.5 (handbooked under Section 88061(l)). The phrase that is being repealed is confusing and unnecessary. It implies that it is up to the Department to determine whether or not licensees should meet the statutory requirements of Health and Safety Code Section 1538.5, when in fact that is not the case.

Section 88069.7(e)

Specific Purpose:

The specific purpose of this section is to adopt explicit language concerning the licensing agency’s authority to inspect, audit, copy, and remove (if necessary for copying) case records; and to stipulate that removal of records is subject to the requirements in the succeeding sections.

Factual Basis:

This section is necessary to expressly delineate the licensing agency's authority with regard to inspecting, auditing, copying, and removing case records. In addition, this section is necessary for clarity and for consistency with language being proposed for use in all other licensed residential community care facilities. Please see the "Factual Basis" under Section 80044(c).

Section 88069.7(e)(1)

Specific Purpose:

The specific purpose of this section is to prohibit the removal of any current emergency or health-related information for current foster children unless the same information is otherwise readily available.

Factual Basis:

This section is necessary to ensure that current emergency or health-related information for current foster children is always available at the foster family agency. This is necessary to protect the health and safety of foster children in the event of an emergency in which the foster family agency must provide assistance. At the same time, this section gives the licensing agency some flexibility in that the information can be removed as long as it is available in another document or format.

Section 88069.7(e)(2)

Specific Purpose:

The specific purpose of this section is to require a licensing representative to prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the administrator or designee.

Factual Basis:

This section is necessary to hold the licensing agency accountable for records that are removed for copying. The list acts as a receipt for the administrator or designee of the records removed.

Section 88069.7(e)(3)

Specific Purpose:

The specific purpose of this section is to establish a time line for the licensing agency to return records removed from a foster family agency; and to stipulate that the records must be returned undamaged and in good order.

Factual Basis:

This section is necessary to ensure that the licensing agency does not keep the records for an unreasonable length of time. It is also necessary to ensure that the records are not returned to the foster family agency damaged or in disarray. Please see the “Factual Basis” under Section 80066(c)(3).

Section 88070(a)(3)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of these amendments is to make editorial changes for clarity and consistency.

Section 88070(a)(4)

Specific Purpose:

The specific purpose of this section is to adopt explicit language concerning the licensing agency’s authority to inspect, audit, copy, and remove (if necessary for copying) children’s case records; and to stipulate that removal of case records is subject to the requirements in the succeeding sections.

Factual Basis:

This section is necessary for clarity and consistency. It expressly delineates the licensing agency’s authority with regard to inspecting, auditing, copying, and removing children’s case records. In addition, this section is consistent with language being proposed for use in the regulations for all licensed residential community care facilities. Please see the “Factual Basis” under Section 80044(c).

Section 88070(a)(4)(A)

Specific Purpose:

The specific purpose of this section is to prohibit the removal of any current emergency or health-related information for current foster children unless the same information is otherwise readily available.

Factual Basis:

This section is necessary to ensure that current emergency or health-related information for current foster children is always available at the foster family agency. This is necessary to protect the health and safety of foster children in the event of an emergency in which the foster family agency must provide assistance. At the same time, this section gives the licensing agency some flexibility in that the information can be removed as long as it is available in another document or format.

Section 88070(a)(4)(B)

Specific Purpose:

The specific purpose of this section is to require a licensing representative to prepare a list of the case records to be removed, sign and date the list upon removal of the case records, and leave a copy of the list with the administrator or designee.

Factual Basis:

This section is necessary to hold the licensing agency accountable for case records that are removed for copying. The list acts as a receipt for the administrator or designee of the case records removed.

Section 88070(a)(4)(C)

Specific Purpose:

The specific purpose of this section is to establish a time line for the licensing agency to return records removed from a foster family agency; and to stipulate that the case records must be returned undamaged and in good order.

Factual Basis:

This section is necessary to ensure that the licensing agency does not keep the case records for an unreasonable length of time. It is also necessary to ensure that the case records are not returned to the facility damaged or in disarray. Please see the “Factual Basis” under Section 80066(c)(3).

Adoption Agencies, Title 22, Division 6, Chapter 9

Section 89119(a)

Specific Purpose:

The specific purpose of this section is to add explicit language concerning the licensing agency’s authority to inspect, audit, copy, and remove (if necessary for copying) minutes of Board meetings.

Factual Basis:

This section is necessary for clarity and consistency. It expressly delineates the licensing agency's authority with regard to inspecting, auditing, copying, and removing minutes of Board meetings. In addition, this section is consistent with language being proposed for use in the regulations for other licensing facility categories. Please see the "Factual Basis" under Section 80044(c).

Section 89119(a)(1)

Specific Purpose:

The specific purpose of this section is to require a licensing representative to prepare a list of the minutes to be removed, sign and date the list upon removal of the minutes, and leave a copy of the list with the executive director or designee.

Factual Basis:

This section is necessary to hold the licensing agency accountable for minutes that are removed for copying. The list acts as a receipt for the executive director or designee of the minutes removed.

Section 89119(a)(2)

Specific Purpose:

The specific purpose of this section is to establish a time line for the licensing agency to return minutes removed from an adoption agency; and to stipulate that the minutes must be returned undamaged and in good order.

Factual Basis:

This section is necessary to ensure that the licensing agency does not keep the minutes for an unreasonable length of time. It is also necessary to ensure that the minutes are not returned to the adoption agency damaged or in disarray. Please see the "Factual Basis" under Section 80066(c)(3).

Section 89182(c)

Specific Purpose:

The specific purpose of these amendments is to make minor editorial changes and to include the licensing agency as one of the entities that has access to information in adoption case records.

Factual Basis:

These amendments are necessary for clarity, and for consistency with proposed Section 89182(d) (and similar proposed sections for other licensed facility categories).

Section 89182(d)

Specific Purpose:

The specific purpose of this section is to adopt explicit language concerning the licensing agency's authority to inspect, audit, copy, and remove (if necessary for copying) adoption case records.

Factual Basis:

This section is necessary to expressly delineate the licensing agency's authority with regard to inspecting, auditing, copying, and removing adoption case records. In addition, this section is necessary for clarity and for consistency with language being proposed for use in the regulations for other licensing facility categories. Please see the "Factual Basis" under Section 80044(c).

Section 89182(d)(1)

Specific Purpose:

The specific purpose of this section is to require a licensing representative to prepare a list of the case records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the administrator or designee.

Factual Basis:

This section is necessary to hold the licensing agency accountable for case records that are removed for copying. The list acts as a receipt for the administrator or designee of the records removed.

Section 89182(d)(2)

Specific Purpose:

The specific purpose of this section is to establish a time line for the licensing agency to return case records removed from an adoption agency; and to stipulate that the records must be returned undamaged and in good order.

Factual Basis:

This section is necessary to ensure that the licensing agency does not keep the case records for an unreasonable length of time. It is also necessary to ensure that the records are not returned damaged or in disarray. Please see the “Factual Basis” under Section 80066(c)(3).

Foster Family Homes, Title 22, Division 6, Chapter 9.5

Section 89244(a) and Title

Specific Purpose:

The specific purpose of this amendment is to repeal the term “the Department” from the title.

Factual Basis:

This amendment is necessary for clarity and consistency. The term “the Department” is gradually being repealed from the foster family homes regulations in favor of the term “licensing agency.” In the case of foster family homes in California, the CDSS may license foster family homes directly; may license foster family agencies (which, in turn, certify family homes); or may allow counties to license foster family homes under contract with the State. The term “licensing agency” covers all of these licensing options and is consistent with the definition of “licensing agency” in Section 89201(l)(1) of the existing foster family homes regulations.

Section 89244(a)(1)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of these amendments is to correct typographical errors in handbook for clarity and consistency.

Section 89244(a)(2)

Specific Purpose:

The specific purpose of these amendments is to delete handbook language that no longer appears in statute and adopt current language.

Factual Basis:

These amendments are necessary for clarity and consistency. They incorporate into handbook new language in Health and Safety Code Section 1534 regarding the frequency of licensing site visits--language added to statute by AB 1752 (Chapter 225, Statutes of 2003) (the budget trailer bill).

Section 89244(a)(3)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of these amendments is to correct typographical errors in existing handbook for clarity and consistency.

Final Modification:

Following the public hearing, a quotation mark was added at the end of handbook for clarity and consistency.

Sections 89244(b) and (b)(1)

Specific Purpose:

The specific purpose of these amendments is to make editorial changes, including repealing language regarding the inspection, auditing and examination of records.

Factual Basis:

These amendments are necessary for clarity and consistency. The use of the term “foster” preceding “child” is necessary to clarify that the licensing agency only has the authority to interview foster children, not natural or adoptive children of the foster parents, without the parents’ consent. The language regarding the inspection, auditing and examination of records has been moved and incorporated into proposed Section 89244(c)--which contains express language regarding records--for clarity and consistency.

Section 89244(c)

Specific Purpose:

The specific purpose of this section is to adopt explicit language concerning the licensing agency’s authority to inspect, audit, copy, and remove (if necessary for copying) children’s or foster family home records; and to refer the reader to other pertinent regulatory sections.

Factual Basis:

This section is necessary for clarity and consistency. It expressly delineates the licensing agency’s authority with regard to inspecting, auditing, copying, and removing children’s or foster family home records. In addition, this section is consistent with language being proposed for use in the regulations for all other licensed residential community care facilities. Please see the “Factual Basis” under Section 80044(c).

Section 89244(c)(1)

Specific Purpose:

The specific purpose of this section is to adopt language regarding the examination of records.

Factual Basis:

This section is necessary for clarity and consistency because the information in Section 89244(c)(1) now logically follows the information in Section 89244(c). Both contain information regarding records that has been moved from Sections 89244(b) and (b)(1).

Section 89244(d) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of this amendment is to renumber existing Section 89244(c) to Section 89244(d) to accommodate the addition of proposed Section 89244(c).

Section 89245(a)(1)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of these amendments is to correct handbook for clarity and consistency.

Section 89245(a)(2)

Specific Purpose:

The specific purpose of these amendments is to delete handbook language that no longer appears in statute and replace it with current language; and to correct section numbering in existing handbook.

Factual Basis:

These amendments are necessary for clarity and consistency. They incorporate into handbook new language in Health and Safety Code Section 1534 regarding the frequency of licensing site visits - language added to statute by AB 1752 (Chapter 225, Statutes of 2003) (the budget trailer bill).

Section 89370(c)

Specific Purpose:

The specific purpose of these amendments is to add explicit language concerning the licensing agency's authority to inspect, audit, copy, and remove (if necessary for copying) children's records in foster family homes; and to stipulate that removal of records is subject to the requirements in the succeeding sections.

Factual Basis:

This section is necessary for clarity and consistency. It expressly delineates the licensing agency's authority with regard to inspecting, auditing, copying, and removing children's records. In addition, this section is consistent with language being proposed for use in the regulations for all other licensed residential community care facilities. Please see the "Factual Basis" under Section 80044(c).

Section 89370(c)(1)

Specific Purpose:

The specific purpose of this section is to prohibit the removal of any current emergency or health-related children's records unless the information is otherwise readily available.

Factual Basis:

This section is necessary to ensure that current emergency or health-related information for foster children is always available at the foster family home. This is necessary to protect the health and safety of foster children in care in the event of an emergency. At the same time, this section gives the licensing agency some flexibility in that those records can be removed as long as the information is available in another document or format.

Section 89370(c)(2)

Specific Purpose:

The specific purpose of this section is to require a licensing representative to prepare a list of the children's records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the caregiver.

Factual Basis:

This section is necessary to hold the licensing agency accountable for children's records that are removed for copying. The list acts as a receipt for the caregiver of the records removed.

Section 89370(c)(3)

Specific Purpose:

The specific purpose of this section is to establish a time line for the licensing agency to return children's records removed from a foster family home; and to stipulate that the records must be returned undamaged and in good order.

Factual Basis:

This section is necessary to ensure that the licensing agency does not keep the children's records for an unreasonable length of time. It is also necessary to ensure that the records are not returned damaged or in disarray. Please see the "Factual Basis" under Section 80066(c)(3).

Section 89566(d)

Specific Purpose:

The specific purpose of these amendments is to add explicit language concerning the licensing agency's authority to inspect, audit, copy, and remove (if necessary for copying) personnel records for specialized foster family homes; and to stipulate that removal of records is subject to the requirements in the succeeding sections.

Factual Basis:

This section is necessary for clarity and consistency. It expressly delineates the licensing agency's authority with regard to inspecting, auditing, copying, and removing personnel records for specialized foster family homes. In addition, this section is consistent with language being proposed for use in the regulations for all other licensed residential community care facilities. Please see the "Factual Basis" under Section 80044(c).

Section 89566(d)(1)

Specific Purpose:

The specific purpose of this section is to prohibit the removal of any current emergency or health-related information for current employees unless the information is otherwise readily available.

Factual Basis:

This section is necessary to ensure that current emergency or health-related information for current caregivers is always available at the specialized foster family home in the event of an emergency. This is necessary to protect the health and safety of caregivers. At the same time, this section gives the licensing agency some flexibility in that those records can be

removed as long as the information is available in another document or format. Please see the “Factual Basis” under Section 80066(c)(1).

Section 89566(d)(2)

Specific Purpose:

The specific purpose of this section is to require a licensing representative to prepare a list of any personnel records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the caregiver.

Factual Basis:

This section is necessary to hold the licensing agency accountable for records that are removed for copying. The list acts as a receipt for the caregiver of the minutes removed.

Section 89566(d)(3)

Specific Purpose:

The specific purpose of this section is to establish a time line for the licensing agency to return personnel records removed from a specialized foster family home; and to stipulate that the records must be returned undamaged and in good order.

Factual Basis:

This section is necessary to ensure that the licensing agency does not keep the records for an unreasonable length of time. It is also necessary to ensure that the records are not returned to the home damaged or in disarray. Please see the “Factual Basis” under Section 80066(c)(3).

Child Care Center General Licensing Requirements, Title 22, Division 12, Chapter 1

Section 101200(a)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of these amendments is to add a reference to Health and Safety Code Section 1596.8535 for clarity and consistency. (See also the justification for Section 101200(a)(3).)

Sections 101200(a)(1) and (a)(2)

Specific Purpose:

The specific purpose of these amendments is to correct typographical errors in existing handbook; and to correct the numbering scheme to conform to Health and Safety Code Section 1596.853.

Factual Basis:

These amendments are necessary for clarity and consistency.

Final Modification:

Following the public hearing, a typographical error in Section 101200(a)(2) was corrected for clarity and consistency (i.e., “request” was corrected to read “receipt,” for consistency with statutory language).

Section 101200(a)(3)

Specific Purpose:

The specific purpose of this section is to adopt relevant new statutory language to handbook.

Factual Basis:

This section is necessary to incorporate into handbook new statutory language regarding the timing of licensing site visits to child care facilities. This language appears in Health and Safety Code Section 1596.8535(a) and was added to statute by AB 1358 (Chapter 122, Statutes of 2002).

Section 101200(b)

Specific Purpose:

The specific purpose of these amendments is to make editorial changes, including repealing references to the inspecting and auditing of child or child care center records.

Factual Basis:

These amendments are necessary for clarity and consistency. The language regarding the inspecting and auditing of child or child care center records has been moved and incorporated into proposed Section 101200(c), which contains express language regarding the Department’s authority with respect to records. (Note: Unlike most of the licensing regulations for residential community care facilities, the use of the term “the Department” is preferred over the use of the term “licensing agency” in the child care regulations.)

Section 101200(b)(1)

Specific Purpose:

The specific purpose of these amendments is to make editorial changes, including repealing language regarding the examination of facility records.

Factual Basis:

These amendments are necessary for clarity and consistency. The addition of the phrase “the licensee shall ensure” is necessary to clarify that the licensee does not have to personally perform this duty, but is nevertheless responsible for seeing that it is carried out. The repealed language regarding the examination of facility records has been moved and incorporated into proposed Section 101200(c)(1) for clarity and for consistency with proposed Section 101200(c).

Section 101200(c)

Specific Purpose:

The specific purpose is to adopt explicit language concerning the Department’s authority to inspect, audit, copy, and remove (if necessary for copying) child or child care center records; and to refer the reader to other pertinent sections.

Factual Basis:

This section is necessary for clarity and consistency. It expressly delineates the Department’s authority with regard to inspecting, auditing, copying, and removing child or child care center records. In addition, this section is consistent with language being proposed for use in the regulations for family child care homes and residential community care facilities. Please see the “Factual Basis” under Section 80044(c).

Section 101200(c)(1)

Specific Purpose:

The specific purpose is to adopt language regarding the examination of records.

Factual Basis:

Adoption of this text is necessary for clarity and consistency. With the addition to the regulations of express language regarding the licensing agency’s authority with respect to records, the language in this section now logically follows that in proposed Section 101200(c).

Section 101200(d) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of this amendment is to renumber Section 101200(c) to Section 101200(d) to accommodate the addition of proposed Sections 101200(c) and (c)(1).

Post-Hearing Modification

Section 101201(a)

Specific Purpose/Factual Basis:

Following the public hearing, this section was amended to add a cross-reference for clarity and consistency. The information in the cross-reference clarifies the hours during which site visits may be made to child care centers; and logically supplements the provisions regarding facility visits under Section 101201.

Sections 101201(a)(1) and (a)(2)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of these amendments is to add references to statutory numbering in Health and Safety Code Sections 1596.98 and 1596.99 to handbook for clarity and consistency.

Section 101201(a)(4)

Specific Purpose:

The specific purpose of these amendments is to make a minor editorial change; to delete from handbook outdated statutory language regarding annual visits to licensed child care centers; and to incorporate into handbook the current requirements in Health and Safety Code Section 1597.09.

Factual Basis:

These amendments are necessary for clarity; and for consistency with AB 1752 (Chapter 225, Statutes of 2003) (the budget trailer bill), which amended Health and Safety Code Section 1597.09 to revise criteria for site visits to child care centers.

Section 101217(a)

Specific Purpose:

The specific purpose of these amendments is to make editorial changes.

Factual Basis:

These amendments are necessary for clarity and consistency. The addition of the phrase “the licensee shall ensure” is necessary to clarify that the licensee does not have to perform this duty personally, but is nevertheless responsible for seeing that it is carried out.

Section 101217(a)(10)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of these amendments is to correct the title and last revision date of a licensing form.

Section 101217(c)

Specific Purpose:

The specific purpose of this section is to adopt explicit language concerning the Department’s authority to inspect, audit, copy, and remove (if necessary for copying) personnel records; and to stipulate that removal of records is subject to the requirements in the succeeding sections.

Factual Basis:

This section is necessary for clarity and consistency. It expressly delineates the Department’s authority with regard to inspecting, auditing, copying, and removing personnel records. In addition, this section is consistent with language being proposed for use in the regulations for family child care homes and residential community care facilities. Please see the “Factual Basis” under Section 80044(c).

Section 101217(c)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to prohibit the removal of specified current records for current personnel unless the information is otherwise readily available.

Factual Basis:

These sections are necessary to ensure that specified current information (most of which is health-related) for current personnel is always available at the center in the event of an emergency. This is necessary to protect the health and safety of center personnel; and, in the case of documentation of completion of health-and-safety training, the health and safety of children in care. At the same time, this section gives the Department some flexibility in that those same records can be removed as long as the same information is available in another document or format. Please see the “Factual Basis” under Section 80066(c)(1).

Section 101217(c)(1)(A) is necessary to ensure that current health-screening records and results of tuberculosis tests for center personnel are available at the center at all times.

Section 101217(c)(1)(B) is necessary to ensure that documentation of completion of health-and-safety training by specified child care staff is available at the center at all times. As a condition of licensure, Health and Safety Code Section 1596.866 requires specified child care providers to complete 15 hours of health-and-safety training, including pediatric cardiopulmonary resuscitation (CPR), pediatric first aid, and preventive health practices (e.g., prevention of infectious diseases, including immunizations). This statute also requires the director of a child care center to ensure that at least one staff person who has current training in pediatric CPR and first aid is present when children are onsite or offsite for facility activities.

Section 101217(c)(1)(C) is necessary to ensure that any other records containing current emergency or health-related information for current center personnel are available at the center at all times.

Section 101217(c)(2)

Specific Purpose:

The specific purpose of this section is to require a licensing representative to prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the administrator or designee.

Factual Basis:

This section is necessary to hold the Department accountable for records that are removed for copying. The list acts as a receipt for the administrator or designee of the minutes removed.

Section 101217(c)(3)

Specific Purpose:

The specific purpose of this section is to establish a time line for the Department to return records removed from a center; and to stipulate that the records must be returned undamaged and in good order.

Factual Basis:

This section is necessary to ensure that the Department does not keep the records for an unreasonable length of time. It is also necessary to ensure that the records are not returned to the center damaged or in disarray. Please see the “Factual Basis” under Section 80066(c)(3).

Section 101217(d) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of this amendment is to renumber existing Section 101217(c) to Section 101217(d) to accommodate the addition of proposed Section 101217(c).

Sections 101217(e) and (e)(1) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of this amendment is to renumber existing Sections 101217(d) and (d)(1) to Sections 101217(e) and (e)(1) to accommodate the addition of proposed Section 101217(c) and the renumbering of prior sections. In addition, in Section 101217(e)(1), a minor editorial change has been made and a cross reference added for clarity and for consistency with Section 101217(c).

Section 101217(f) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of these amendments is to renumber existing Section 101217(e) to Section 101217(f) to accommodate the addition of proposed Section 101217(c) and the renumbering of prior sections.

Section 101221(a)

Specific Purpose:

The specific purpose of these amendments is to make editorial changes.

Factual Basis:

These amendments are necessary for clarity and consistency. The addition of the phrase “the licensee shall ensure” is necessary to clarify that the licensee does not have to perform this duty personally, but is nevertheless responsible for seeing that it is carried out.

Section 101221(d)

Specific Purpose:

The specific purpose of this section is to add explicit language concerning the Department's authority to inspect, audit, copy, and remove (if necessary for copying) children's records; and to stipulate that removal of records is subject to the requirements in the succeeding sections.

Factual Basis:

This section is necessary for clarity and consistency. It expressly delineates the Department's authority with regard to inspecting, auditing, copying, and removing resident records. In addition, this section is consistent with language being proposed for use in the regulations for family child care homes and residential community care facilities. Please see the "Factual Basis" under Section 80044(c).

Section 101221(d)(1) et seq.

Specific Purpose:

The specific purpose of these amendments is to prohibit the removal of specified current records for current children unless the same information is otherwise readily available.

Factual Basis:

These sections are necessary to ensure that specified current information (most of which is health-related) for current children is always available at the center in the event of an emergency; and to ensure that appropriate care is provided on a day-to-day basis. This is necessary to protect the health and safety of children at all times. Removal of critical information for even a few hours is not acceptable because emergencies are by their nature unpredictable. At the same time, this section gives the Department some flexibility in that the specified records can be removed if the same information is available in another document or format.

Section 101221(d)(1)(A) is necessary to ensure that the name, address and telephone number of a child's authorized representative or other responsible parties are available at the center at all times.

Section 101221(d)(1)(B) is necessary to ensure that the name, address and telephone number of the child's physician, dentist and any other health-care providers are available at the center at all times.

Section 101221(d)(1)(C) is necessary to ensure that medical assessments and other specified information are available at the center at all times.

Section 101221(d)(1)(D) is necessary to ensure that current records of any illness or injury as specified are available at the center at all times.

Section 101221(d)(1)(E) is necessary to ensure that records of a child's current medications are available at the center at all times.

Section 101221(d)(1)(F) is necessary to ensure that current authorizations for children's activities away from the center are available at the center at all times.

Section 101221(d)(1)(G) is necessary to ensure that current immunization records are available at the center at all times.

Section 101221(d)(1)(H) is necessary to ensure that any other records containing current emergency or health-related information are available at the center at all times.

Section 101221(d)(2)

Specific Purpose:

The specific purpose of this section is to require a licensing representative to prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the administrator or designee.

Factual Basis:

This section is necessary to hold the Department accountable for records that are removed for copying. The list acts as a receipt for the administrator or designee of the records removed.

Section 101221(d)(3)

Specific Purpose:

The specific purpose of this section is to establish a time line for the Department to return records removed from a center; and to stipulate that the records must be returned undamaged and in good order.

Factual Basis:

This section is necessary to ensure that the Department does not keep the records for an unreasonable length of time. It is also necessary to ensure that the records are not returned to the facility damaged or in disarray. Please see the "Factual Basis" under Section 80066(c)(3).

Section 101221(e) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of this amendment is to renumber existing Section 101221(d)(1) to Section 101221(e) to accommodate the addition of proposed Sections 101221(d)(1), (d)(2) and (d)(3).

Sections 101221(f) through (h) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose/factual basis is to renumber Sections 101221(e) through (g) to Sections 101221(f) through (h) to accommodate the renumbering of previous sections, as indicated above.

Family Child Care Homes, Title 22, Division 12, Chapter 3

Section 102391, Title

Specific Purpose:

The specific purpose of this amendment is to add “the Department” to the title.

Factual Basis:

This amendment is necessary for clarity and consistency. The inspection authority in this section pertains to that of the Department, and not to that of any other person or entity. With this amendment, this section title is now consistent with section titles pertaining to the Department’s inspection authority in other licensing facility categories.

(Note: Unlike most of the licensing regulations for residential community care facilities, the use of the term “the Department” is preferred over the use of the term “licensing agency” in the regulations for family child care homes.)

Section 102391(b)

Specific Purpose:

The specific purpose of this section is to repeal outdated regulatory language; and to add current statutory language to handbook.

Factual Basis:

This section is necessary to incorporate into handbook new statutory language regarding the timing of licensing site visits to child care facilities. This language appears in Health and Safety Code Section 1596.8535(a) and was added to statute by AB 1358 (Chapter 122, Statutes of 2002). It supersedes (and essentially duplicates) the repealed regulatory language.

Section 102391(d)

Specific Purpose:

The specific purpose of this section is to add explicit language concerning the Department's authority to inspect, audit, copy, and remove (if necessary for copying) children's records or other family child care home records; and to stipulate that removal of records is subject to the requirements in the succeeding sections.

Factual Basis:

This section is necessary for clarity and consistency. It expressly delineates the Department's authority with regard to inspecting, auditing, copying, and removing children's or family child care home records. In addition, this section is consistent with language being proposed for use in the regulations for child care centers and residential community care facilities. Please see the "Factual Basis" under Section 80044(c).

Section 102391(d)(1) et seq.

Specific Purpose:

The specific purpose of this adopted text is to prohibit the removal of specified current records for current children unless the same information is otherwise readily available.

Factual Basis:

These sections are necessary to ensure that specified current information (most of which is health-related) for current children and staff is always available at the family child care home in the event of an emergency; and to ensure that appropriate care is provided on a day-to-day basis. This is necessary to protect the health and safety of children and staff at all times. Removal of critical information for even a few hours is not acceptable because emergencies are by their nature unpredictable. At the same time, this section gives the Department some flexibility in that the specified records can be removed if the same information is available in another document or format.

Section 102391(d)(1)(A) is necessary to ensure that current emergency information cards for current children are available at the home at all times.

Section 102391(d)(1)(B) is necessary to ensure that a current roster of children in care is available at the home at all times.

Section 102391(d)(1)(C) is necessary to ensure that current children's immunization records are available at the home at all times.

Section 102391(d)(1)(D) is necessary to ensure that documentation of completion of health-and-safety training by the licensee and any other specified personnel is available at the home at all times. As a condition of licensure, Health and Safety Code Section 1596.866 requires each family child care licensee to complete 15 hours of health-and-safety training, including pediatric CPR, pediatric first aid, and preventive health practices (e.g., prevention of infectious diseases, including immunizations). This statute also requires each licensee of a large family child care home to ensure that at least one staff person who has current training in pediatric CPR and first aid is present at all times when children are onsite or offsite for facility activities.

Section 102391(d)(1)(E) is necessary to ensure that any other records containing current emergency or health-related information for current children in care or staff are available at the home at all times.

Section 102391(d)(2)

Specific Purpose:

The specific purpose of this section is to require a licensing representative to prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the licensee or designated substitute.

Factual Basis:

This section is necessary to hold the Department accountable for records that are removed for copying. The list acts as a receipt for the licensee or designee of the records removed.

Section 102391(d)(3)

Specific Purpose:

The specific purpose of this section is to establish a time line for the Department to return records removed from a family child care home; and to stipulate that the records must be returned undamaged and in good order.

Factual Basis:

This section is necessary to ensure that the Department does not keep the records for an unreasonable length of time. It is also necessary to ensure that the records are not returned to the home damaged or in disarray. Please see the “Factual Basis” under Section 80066(c)(3).

Section 102392

Specific Purpose:

The specific purpose is to repeal outdated regulatory language regarding site visits to licensed family child care homes and adopt into handbook current requirements in Health and Safety Code Section 1597.55a.

Factual Basis:

These amendments are necessary for clarity; and for consistency with AB 1752 (Chapter 225, Statutes of 2003) (the budget trailer bill), which amended Health and Safety Code Section 1597.55a to revise site visit criteria for family child care homes. All of the topics in the repealed regulatory language are addressed in Health and Safety Code Section 1597.55a.

Final Modification:

Following the public hearing, a cross-reference in Section 102392(a) was added for clarity and consistency. The information in the cross-reference clarifies the hours during which site visits may be made to family child care homes; and logically supplements the provisions regarding facility visits under Section 102392.

b) Identification of Documents Upon Which Department Is Relying

- *Golden Day Schools, Inc., v. Pirillo* (C.D. Cal. 2000) 118 F. Supp. 2d 1037
- Internal CDSS/Community Care Licensing Division memo, dated July 24, 2001, from Cathleen A. McCoy to regional and district office managers regarding “Prohibition Against Removal of Records (All Licensing Categories)”

c) Local Mandate Statement

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500, et seq. of the Government Code.

d) Statement of Alternatives Considered

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered at the Department's public hearings held on June 16, 2004. There was no oral testimony presented at the public hearing. Written testimony was received from the California Assisted Living Association (CALA), United Child Care Union (UCCU), and Elliot Sanford, (Sanford). Duplicate testimony was received from Jeannie Hester, Jeffrey Abbe, Aida Lopez, Sonia Smith, Violette Kaldas, Tracey Conaty, Paula Adams, Debra Messinger, Melanie Rincon, Mark Cavanah, Isabelle Rozycki, Carolyn Hardyman, Jamie Huang, Tracy Henry, Connie Sarg, Mona Green, Velvet Herrera, Lynn Holland, Sherry Moraga, Claudia Flores, Rosie Kennedy, Jennifer Hill, Markaye Larson, Celeste Hunter, Debbie Green, Sandra Lee Jensen, Lillie Cortez, Barry Holder, Scott Askey, Casey Ehlers, Rosalinda Cortes, Evelyn Navarro, Vickie Bragdon, Paulette Akin, Nancy Wyatt, Rick Surber, Alex Shulman, Megan Hede, Jim Schmitz, Diana Abeyta, Jeanette Aldana, Dan Newman, Becky Brock, Yvonne Richard, Sally Torres, Jill Garrett, Lorraine Macaulay, Carrie LaMar, Maria Wauman, JoAnn Kimbell, Joy Nwabueze, Marie Bareilles, Emmett Dorsett, Melinda Brown, Judith Baserga, Lisa Oleson, Billy Aldana, Gloria Williams and Mary Smith. These group of testifiers will be known as FCC Providers. Testimony duplicate to the one mentioned above with additions were received from Karen Rodgers (Rodgers) and Renee Borello (Borello).

General Comments:

1. Comment:

“The proposed regulations require the licensing representative to “prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the administrator or designee.” To minimize the risk of documents being inadvertently left off the list, the regulations should require the administrator or designee to verify and sign the list.” (CALA)

Response:

The Department appreciates this comment, but does not believe that such a regulatory requirement is necessary for the following reasons:

- Site-visit comments/findings/corrective actions are documented on a licensing form titled Facility Evaluation Report (LIC 809). It is anticipated that any list of records to be removed from a facility would generally be documented on the LIC 809. (If there were no other issues, the purpose of the visit noted on the LIC 809 would be simply to remove records for copying.) The licensee (or designee) is already required to sign the LIC 809.
- If a licensing representative did prepare a list of records to be removed separately from the LIC 809, it is anticipated that the list would be attached to the LIC 809 and considered part of the LIC 809.
- Whether the list of records to be removed was documented on the LIC 809, attached to the LIC 809, or prepared as a separate document entirely, the licensee (or designee) would be free to voice any objections, to double-check the licensing representative's work, or to co-sign the list.

2. Comment:

“The proposed regulations allow three business days for the licensing representative to copy and return documents that the licensee is required to maintain. The resident and personnel records maintained in these facilities contain vital information that may need to be accessed rapidly in order to respond to an emergency or to provide necessary care. Although the proposed regulations specify that originals may only be removed if the information is available to the provider from some other source, that other source may not be as convenient. Since this information is important enough to mandate that it be collected, documented, and maintained, ***CALA recommends that the licensing representative return the material promptly within 24-hours.***” (CALA)

Response:

The Department appreciates this comment, but does not find it necessary to amend the regulations. Originally the Department did consider requiring licensing representatives to return any records removed from a facility within 24 hours. However, that alternative was rejected as impractical, especially in cases where significant travel was required on the part of the licensing representative. A requirement to return records within 24 hours would also be unrealistic if the records were removed from a facility on the day before a weekend or holiday. In addition, the time line proposed in the regulations -- that any records removed be returned to the facility within three business days -- provides some leeway should an unpredictable event occur (such as the licensing representative becoming ill, or being delayed because of a car breakdown). The Department believes that its proposed time line is appropriate because it would give the licensing agency time to copy the records while not inconveniencing the

facility for too long a time period. Moreover, it is the licensee's responsibility to ensure that emergency-related information is readily accessible regardless of the format or source. It is anticipated that many records removed from a facility for copying would be returned in fewer than three days.

3. Comment:

"It should also be clarified that original records may only be removed if a copy machine is not available on site. The resident and personnel records maintained in these facilities contain vital information that may be needed in order to respond to an emergency or to provide necessary care. This clarification will specify that if the documents can be copied onsite, licensing staff may not remove the originals." (CALA)

Response:

The Department appreciates this comment, but does not find it necessary to amend the regulations. Requiring that records can only be removed from a facility for copying if a copy machine is not available on site would not give the licensing agency the flexibility it needs to carry out its functions. The proposed regulations state that records "may be removed *if necessary for copying*" (emphasis added). In other words, the proposed regulations do not preclude a licensing representative from using an on-site copier to copy records. If a licensing representative only needed to copy a small amount of material, and the provider agreed to allow the licensing representative to use the facility's copier, then on-site copying of the information would probably be the easiest solution for all parties. However, under other circumstances -- for example, if there was a great deal of material to copy, and/or it was the end of the day, and/or the on-site copier was prohibitively expensive to use given the amount of material to be copied -- then it would make more sense for the licensing representative to remove the records for the purpose of copying them. Without the flexibility to decide how best to handle the wide variety of circumstances that they may encounter during on-site inspections, licensing representatives would not be able to do their jobs effectively.

4. Comment:

"Records Reproduction and Removal

"We applaud the section authorizing inspection of records. UCCU recommends adding that if a provider has a copying machine, and the provider is willing, the licensing agent can use the provider's machine and reimburse the provider at 20 cents a page." (UCCU)

Response:

The Department appreciates this comment, but does not find it necessary to amend the regulations. Please see the response to comment #3 above. In addition, it is not the Department's practice to specify costs in the regulations. Costs for licensing fees and

civil penalties are stated in statute, as well as “reasonable costs” of 10 cents per page for copying requested documents.

5. Comment:

“We support the requirement that the licensing agent must make a list of the records and sign and date the list, leave a copy with the provider, and return the records “undamaged and in good order within three business days following the date the records were removed.” However, we are concerned that providers will have incomplete records if the records in the hands of the Licensing Agency are lost or damaged, which can occur accidentally. Therefore, UCCU recommends that if the records are not returned in three days or are lost or damaged, the Licensing Agency be required to send a letter to the provider informing the provider of the problem and the inability to return the records or return the records in good condition. It is important that providers have official documentation from the Licensing Agency that their records have been lost or damaged, both for the providers’ permanent files and for the providers to give to parents requesting documents.” (UCCU)

Response:

The Department appreciates this comment, but does not find it necessary to amend the regulations. Please see the response to comment #9.

6. Comment:

“Site visits and Inspections - Clarifications

“Under the code and regulations, Licensing Department representatives can conduct inspections or site visits (announced or unannounced) during business hours and one hour before or after normal business hours. The department also can conduct inspections at other times only if it is necessary to protect the health or safety of a child. The Handbook incorporates the statutory language on inspections that expands authority to inspect at any time to protect the health and safety of a child. UCCU recommends adding a clarification of the statutory provisions and current regulations.

“For the visits during regular business hours or one hour before or after normal business hours, UCCU recommends that the regulations specify that, in the event no child is receiving care, the Licensing Agency representative not issue citations for violations. If the Licensing Agency representative makes an unannounced visit on a day that the provider’s business is closed because children are absent or the provider is taking a day off, the Licensing Agency representative should not issue citations for minor violations that would exist if the children were present. The Licensing Agency representative could enter the premises to verify that there are no children present, but should not issue citations for conditions that otherwise would be violations if children were present.

“For example, if a visit is unannounced and a family provider is not actually operating the center on that particular day, the provider’s home might have conditions not permissible if children were present, such as an uncovered swimming pool or detergent bottle on a play table. Providers should not be cited for these conditions because they have no consequence if children are not present on that day.

“If the unannounced visit is after business hours, or one hour before or after normal business hours, as permitted under the Health and Safety Code, the only purpose of the visit should be to determine whether children are receiving care. If there are no children receiving care, the inspector should leave immediately because there is no need to protect the health or safety of a child. There should be no documentation on the provider’s record or any reference to any condition observed while determining whether a child is present. If the inspector observes something suspect, the inspector should return during normal operational hours or one hour before or after operations.” (UCCU)

Response:

This comment is outside of the scope of this regulations package. However, as you know, Health and Safety Code Section 1596.8535(a) -- which appears in handbook in proposed Section 102391(b)(1) -- states that the Department is to conduct site visits to family child care homes beginning one hour before and ending one hour after normal business hours, or at any time child care services are being provided. The Department may only visit the home at other times if, in the course of a complaint investigation, it determines that such an inspection or site visit is necessary to protect the health or safety of any child in the home.

7. Comment:

“The Department also should develop a notification form for family child care providers to send the Department when the providers temporarily suspend operations for extended periods.” (UCCU)

Response:

The Department appreciates this comment, but it is outside of the scope of this regulations package. However, the comment will be referred to the CCL Child Care Policy Unit (or you may contact the Child Care Policy Unit directly at 916-229-4500 and ask to speak with a policy analyst or manager).

8. Comment:

“In the year 2000, the Federal District Court held that CCL personnel did not have the right to remove facility records for review and/or reproduction (Golden Day Schools, Inc. v. Pirillo). In fact, the court held that CCL had violated the licensee’s Fourth Amendment right against unreasonable seizures. It further held that the CCL staff

attorney and other personnel did not have immunity from liability as a result of that glaring constitutional rights violation.

“DSS Chief Counsel issued a memorandum on June 28, 2001 which detailed the above court ruling and recommended preparation and circulation of a district-wide memo intended to clarify CCL policy and prevent any further litigation (copy attached). [Note from CDSS: Unable to supply memo as it is confidential, attorney/client privilege.] “Accordingly, on July 24, 2001, all regional managers and district office managers received a memorandum per the Chief Counsel’s directive (copy attached). Most notably, it provided that files cannot be removed without the licensee’s consent. If the licensee consented to record removal, CCL personnel were supposed to have the licensee acknowledge such consent and CCL personnel were to provide an itemized list of file contents. The memo lastly provided that any records removed should be returned by the next working day.

“Regrettably, these clear directives have not sufficed to curtail future constitutional violations. On July 15, 2003, Senior Special Investigator Rhonda Adams-Waldorf grabbed a facility file from the hand of a licensee representative, saying “I’m seizing this file”. This event took place after that representative had been making document copies as requested without any protest whatsoever. Consent of the licensee was never sought, much less obtained as there was no opportunity provided. The file was not reviewed prior to removal and the investigator did not provide an inventory of the file contents. Moreover, the investigator did not return the illegally seized file until 8/6/03 - twenty-three days later!

“The documents detailing the file seizure are in the Department’s possession; however, this writer will be happy to convey copies of same to the appropriate parties.

“Evidently, the Senior Special Investigator seized the file at the direction of DSS staff counsel Peter Paul Castillo, Regional Manager Ellen Martin, and Local Unit Manager Carol Marcroft-Dix.

“Since these senior CCL officials caused and condoned this obvious violation of CCL’s own regulations and internal memoranda, there is definitely a need to address this issue by modifying the current regulations.

“One obvious concern arises: there will obviously be sanctions imposed upon a licensee for noncompliance with the pertinent regulations; however, what sanction short of litigation exists for CCL’s failure to abide by its own regulations as detailed above?

“The undersigned fully recognizes the need for CCL to obtain copies of file records but is concerned that the Chief Counsel’s policy directives have been systematically disregarded by senior CCL officials who surely were privy to the important policy memoranda widely circulated in 2001.” (Sanford)

Response:

The Department appreciates this comment, but it is outside of the scope of this regulations package. Nevertheless, the Department's failure to abide by these regulations would be subject to the same sanctions as for failing to abide by any other regulations. Complaints may be made to the manager of the affected CCL office.

9. Comment:

"The new regulations should clarify that if DSS removes records from a family child care provider's home, and the records are permanently lost or destroyed, then DSS must send a letter to the provider listing the items lost or damaged. It is important that I have this for my records and also to give to the parents who request information from me.

"Also, you should clarify that if DSS makes an unannounced site visit when no children are present, DSS must not issue me citations for any minor violation. I provide services in my home, and if an inspector comes when I am not caring for kids, I should not receive citations. I should not have to worry about inspections of my home when I am not working." (FCC Providers)

Response:

The Department appreciates this comment, but does not find it necessary to amend the regulations. The intent of the proposed regulations is not to cover every circumstance, but only the most common and routine of circumstances. It would be very rare for the Department to lose or destroy records removed from a family child care home for copying. If that did happen, it would be common sense for the Department to provide the home with a list of the records lost or destroyed. Moreover, it would be common sense for the Department itself to initiate contact with the provider regarding any lost or destroyed records, especially in light of proposed Section 102391(d)(3) -- which requires licensing representatives to return any records removed undamaged and in good order within three business days. The licensee would in any case already have a comprehensive list of any records removed for copying. Proposed Section 102391(d)(2) requires the licensing representative to leave a copy of such a list with the licensee (or designated substitute) upon removal of the records from the home.

The second issue you raise is outside of the scope of this regulations package. However, please see response to comment #6.

10. Comment:

"The new regulations should clarify that if DSS removes records from a family child care provider's home, and the records are permanently lost or destroyed, then DSS must send a letter to the provider listing the items lost or damaged. It is important that I have this for my records and also to give to the parents who request information from me.

“Also, you should clarify that if DSS makes an unannounced site visit when no children are present, DSS must not issue me citations for any minor violation. I provide services in my home, and if an inspector comes when I am not caring for kids, I should not receive citations. I should not have to worry about inspections of my home when I am not working.

“My family should be able to do and work on anything they choose, even if it is during daycare hours, as long as there are no daycare children present. That means they can work on cars, cut, sew, hot glue gun in the livingroom if they want. Use a curling iron in the bathroom. Leave their personal items in the bathroom too. If there are no daycare children present, why should it matter? It is mine and their home to, when no daycare children are present, irregardless of what time of the day it is.

“I should be able to entertain, relax, nap, and have a messy house if I choose if all the kids go home early or I have a day off.” (Rodgers)

Response:

See response to comment #9.

11. Comment:

“The new regulations should clarify that if DSS removes records from a family child care provider’s home, and the records are permanently lost or destroyed, then DSS must send a letter to the provider listing the items lost or damaged. It is important that I have this for my records and also to give to the parents who request information from me.

“Also, you should clarify that if DSS makes an unannounced site visit when no children are present, DSS must not issue me citations for any minor violation. I provide services in my home, and if an inspector comes when I am not caring for kids, I should not receive citations. I should not have to worry about inspections of my home when I am not working.

“Besides, if I am not caring for children at the time you are nor welcome in my home. This is my HOME when children are not here and you will NOT invade my privacy!” (Borello)

Response:

See response to comment #9.

g) 15-Day Renotice Statement

A 15-day renotice was not required because only nonsubstantive changes were made following the public hearing.

